IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2268 of 2004

Rajen K. Shah .. Plaintiff

versus

Choksi Tube Co. Ltd. & ors. .. Defendants

...

Mr.A. Amin i/b B. Amin for the plaintiff.

CORAM : D.G. KARNIK,J.

DATED : 15th March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendant.

2. The plaintiff has filed on record the affidavit of service sworn in by Sudhakar S. Rane, Bailiff in the office of Sheriff of Bombay proving service of writ of summons on the defendants. Despite service of writ of summons in August 2004, the defendants have not filed an appearance as required under Order 37 Rule 2 of the Code of Civil

Procedure entitling the plaintiff to a decree under Order 37 Rule 2(3) of the Code of Civil Procedure.

3. The learned counsel for the plaintiff hands in original documents along with a list. The documents are taken on record and colly. marked Exhibit-A.

4. I have perused the plaint and also the original documents. The defendant no.1 is a Company incorporated and registered under the Companies Act and the defendant nos.2 to 4 are its Directors. In pursuance of the request of the defendants, the plaintiff advanced to the defendant a loan of Rs.20 lakhs with interest at 24 % p.a. The loan was advanced by the plaintiff by the cheque payable at Mumbai and was received by the defendant in their corporate office at Mumbai. The defendants had executed a promissory note agreeing to pay on demand Rs.20 lakhs with interest. The defendant no.1 also gave to the plaintiff two cheques. One for Rs.20 lakhs towards repayment of principal and another cheque of Rs.1,34,137/- for the payment of the interest. Cheques were drawn on Indian Overseas Bank, Nariman Point Branch, Mumbai. Both the cheques when presented for payment were dishonoured. The original promissory note, the original cheques as

well as the original dishonour memos of the Bank are filed on record. The defendant nos.2 to 4 having agreed to be guarantors executed a deed of guarantee at Mumbai. The original deed of guarantee is also produced on record.

5. Despite notice of demand, the defendants failed and neglected to make the payment. The plaintiff has filed on record the affidavit sworn in by U.V. Pandya proving the documents. In the circumstances, the plaintiff is entitled to a decree.

6. As regards the future interest, the defendants had agreed to pay interest at 24% p.a. As the suit is also based on Negotiable Instruments in view of section 80 of the Negotiable Instruments Act, the future interest would be restricted to 18% p.a. Hence, I pass the following order:-

7. The defendant shall pay to the plaintiff a sum of Rs.28,91,836/- together with interest on the principal sum of Rs.20,00,000/- (Rupees Twenty lacs only) at 18% p.a. from the date of the suit till payment and all costs of the suit.

D.G. KARNIK,J